IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 1359 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RITESHKUMAR NAVNITLAL PATEL - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR ZUBIN F BHARDA for Applicant(s) : 1,
MR M.A.PATEL, Ld.ADDL.PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 21/03/2006

ORAL JUDGMENT

1. Rule. Mr.Mukesh A. Patel, learned Addl. Public Prosecutor waives service of Rule on behalf of the respondent State.

2. This is an application by the accused of C.R.No.I-

10/2003 registered at Bhuj ACB Police Station seeking deletion of condition no.3 imposed upon him by the learned Additional Sessions Judge, Gandhidham-Kuchh passed in Criminal Misc. Application No.178 of 2005 dated 14th June, 2005. By said condition the applicant is directed not to leave India without obtaining prior permission of the said Court. It is the say of the applicant that he is a married person and his wife Patel Diptiben Nathubhai is staying in America at New Jercy city and he intends to meet her, but, because of the condition imposed by the learned Additional Sessions Judge, Gandhidham-Kuchh, he is not able to go to America and meet her. It also appears from the application that the applicant had approached the said Court for the purpose of getting condition no.3 deleted to enable him to go to America. However, by order dated 20th September, 2005, Criminal Misc. Application No. 344 of 2005 was rejected by the learned Judge.

3. The applicant has now approached this Court seeking the same relief.

4. I have heard Mr.Zubin Bharda, learned advocate for the applicant and Mr.Mukesh Patel, learned APP for the opponent State. I have also perused the application and

the documents attached to it. There is no dispute that the applicant is a married person and his wife is living in America. There is also no dispute that he is holding valid Visa to go to America and also the passport. However, the apprehension has been expressed by the prosecution that if he is allowed to go to America he will not return. Mr.Bharda has submitted that considering the nature of Visa which is for a limited period, the applicant cannot stay for more than the stipulated time in America, and, therefore, he is bound to leave it before the expiry of the period. He has further submitted that the applicant is ready to deposit the sum which is alleged to have been defalcated by him or immovable property worth that amount by way of security for his return. Mr.Mukesh Patel, learned APP has however again expressed the apprehension about his not returning to this country.

5. Having given careful consideration to the rival submissions, it clearly appears that Visa is for a limited period. It also to be kept in mind that the applicant is ready to deposit adequate security before leaving India. Further his past conduct shows that he has been sincere in complying with the conditions imposed upon him by the court inspite of the fact that

he had full opportunity to abscond. Keeping in mind all these factors in view, the aforesaid condition can be lifted for a limited period. It is stated by the applicant that he will return to India on or before 29th June, 2006 since his visa expires on 30th June, 2006. Hence, the following order.

6. This application is allowed and condition No.3 imposed upon the applicant vide order dated 14.06.2005 passed in Criminal Misc. Application No.178 of 2005 by the sessions Court is ordered to be suspended till 30th June, 2006.

7. The applicant shall furnish security in the form of Rs.1,50,000/- in cash before the trial Court and trial Court is directed to invest that amount in some Nationalize Bank so as to fetch interest on the said amount initially upto 30th June, 2006.

8. The investigating officer is directed to give complete information to the American consulate at Bombay with regard to pendency of the case against the applicant and also that he is holding visa for a limited period so that the consulate can accordingly inform its counterpart in the USA. The investigating

officer is further directed to furnish to the consulate the residential address of wife of the applicant where he intends to stay while in America.

9. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(AKSHAY H. MEHTA, J.)

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